

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 25913 of 2007 (I)

PETITIONER : -

BALACHANDRAN NAIR, TC 26/624,
MANALIL HOUSE, OPP.FIRE STATION,
THIRUVANANTHAPURAM.

BY ADV.SRI.P.RAMAKRISHNAN

RESPONDENTS :-

1. KERALA STATE CO-OPERATIVE COIR MARKETING FEDERATION LIMITED
NO.679, ALAPPUZHA,
REPRESENTED BY ITS MANAGING DIRECTOR.
2. THE DIRECTOR OF COIR DEVELOPMENT,
THIRUVANANTHAPURAM.

BY ADV.SRI.K.S.HARIHARAPUTHRAN, SC, COIRFED
BY ADV.SMT.V.PSEEMANDINI (SR.)
BY ADV.SRI.JOBY CYRIAC, SC, COIRFED
BY Sr. GOVERNMENT PLEADER SRI. A.J. JOSE AEDAIODI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-06-2015. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : TRUE COPY OF JUDGMENT DATED 16.03.2004 IN O.P. No.801/98.

EXHIBIT P2 : TRUE COPY OF SETTLEMENT DATED 12.04.2005.

EXHIBIT P3 : TRUE COPY OF JUDGMENT DATED 03.10.05 IN W.A No. 1435/04.

EXHIBIT P4 : TRUE COPY OF REPRESENTATION DATED 23.09.06 FROM THE
PETITIONER TO THE 1st RESPONDENT.

EXHIBIT P5 : TRUE COPY OF ORDER DATED 06.06.07 OF 1st RESPONDENT.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 25913 of 2007

Dated this the 18th day of June, 2015

JUDGMENT

The issue raised in this writ petition concerns itself with the variable Dearness Allowance to be paid to the employees of the respondent Federation on a par with the Government employees.

2. The petitioner, having joined the service on 06.09.1990, retired from service on 31.10.2003 as General Manager. Initially, the petitioner along with nine others filed O.P. No. 801/1998 claiming Dearness Allowance on a par with the government servants in terms of Rule 189(3) of the Kerala Co-operative Societies Rules. When this Court allowed the said O.P. through Exhibit P1 judgment, the respondent Federation filed Writ Appeal No. 1435/2004. Before the said writ appeal could be adjudicated on merits, the respondent Federation and the employees, however, had

entered into a settlement concerning, *inter alia*, the payment of Dearness Allowance. Under those changed circumstances, a learned Division Bench of this Court disposed of the writ appeal through Exhibit P3 judgment recording the settlement entered into between the employees and the respondent Federation. The learned Division Bench, in fact, has observed that the settlement should be implemented within one month from today.

3. Despite the fact that Exhibit P3 judgment was rendered by a learned Division Bench of this Court on 03.10.2005 with a specific direction to implement the settlement within one month therefrom, when the respondent Federation has not acted further, the petitioner, having retired as General Manager, filed the present writ petition.

4. After entering its appearance, the respondent Federation filed its statement. To obviate any further discussion on the issue, it is apposite to extract a portion of the said statement, which reads thus:

"3. The total arrear amount payable to the officers has not been paid in full so far due to financial difficulty. Only 60% of the DA arrears for the period from 01.01.2000 to 31.12.2003 has been paid so far to the concerned officers who are still in service. The balance amount of 40% DA arrear for the period from 01.01.2000 to 31.12.2003 and the amount payable for the period from 01.01.2004 to 30.06.2006 is still pending to be paid to the officers who are in service of the first respondent. The petitioner has retired from service on 30.10.2003 and is eligible for getting Dearness Allowance arrear for the period from 01.01.2000 to 30.10.2003. The arrear Dearness Allowance payable to the petitioner could not be paid due to extreme paucity of funds and the payment of D.A. Arrears to the petitioner at the above rate. It is submitted that 60% Dearness Allowance arrears will be paid at the earliest and the balance DA arrear amount payable will be paid to the petitioner at the time of payment of balance arrear amount payable to the concerned officers in compliance to the judgment of the Hon'ble High Court."

5. When the learned counsel for the petitioner has strenuously contended that in the light of specific finding by this Court in Exhibit P1 judgment, which, according to her, stood undisturbed in Exhibit P3 judgment, where too there

was an observation for implementation of the settlement within a time frame, no justifiable reason has been shown by the respondent Federation in not paying to the petitioner the difference amount of Dearness Allowance, even after long lapse of time. The learned counsel has, eventually, submitted that in the light of the categorical admission by the respondent Federation in its statement, it is estopped from contending otherwise at this juncture.

6. The learned Standing Counsel for the respondent Federation has made valiant efforts to impress upon the Court that notwithstanding the judgment the federation has suffered and notwithstanding the categorical admission in the statement, the respondent federation has justifiable reasons not to pay the difference amount of Dearness Allowance arrears. He has eventually conceded that the respondent federation would be taking every steps to ensure that the petitioner is paid the amounts due to him at the earliest.

7. Indeed, indisputably, as could be seen from Exhibit P5, the Government did accord the sanction to pay to the petitioner the Dearness Allowance with effect from 01.01.2000 at the rate fixed by the Government as on

03.10.2005.

8. From the above narration of facts, I do not see any contentious issue emerging to be adjudicated upon. In the face of Exhibit P1 judgment, as has been affirmed in Exhibit P3 judgment by a learned Division Bench, there is no scintilla of doubt that the respondent federation is required to implement the settlement it has entered into with its employees, thereby extending the benefit of differential Dearness Allowance to the petitioner on a par with the Government servants. More particularly, through Exhibit P5, the Government has already accorded the necessary sanction, which is in addition to the categorical admission of its liability by the respondent federation in its statement filed before this Court.

9. In the above facts and circumstances, this Court allows the writ petition, directing the respondent federation to pay to the petitioner the differential amount of Dearness Allowance in terms of Rule 189(3) of the Rules, as has been sanctioned by the Government in Exhibit P5 proceedings. Needless to observe that given the inordinate delay that has already taken, despite the very federation agreeing to pay

the amount way back in 2007 itself, this Court further directs the respondent federation to pay to the petitioner the differential amount of Dearness Allowance as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-